IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2900 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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FIROZKHAN HAJIKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2900 of 2002

MR SHAKEEL A QURESHI for Petitioner No. 1

MR SJ DAVE, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 07/05/2002

ORAL JUDGEMENT

By means of filing this petition, the petitioner has challenged the order of detention dated 5-1-2002 passed by the Police Commissioner, Surat City against his

friend who has been branded as a dangerous person.

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the petitioner at length and learned AGP, Mr.S.J.Dave, for the respondents. I have also perused the material on record. Though various contentions were raised in the petition, learned advocate for the petitioner has restricted his arguments on the point of delay in passing the detention order. He has stated that detention order has been passed by the authority relying upon a solitary offence registered against his friend before Salabatpura Police Station III C.R.No.5622 of 2001 on 5-10-2001 and he was arrested on 7-10-2001 and released on bail on 27-11-2001 while the order of detention was passed on 5-1-2002 relying upon this offence and hence, there is a delay of three months in passing the order. Learned AGP has fairly admitted the same. He has relied upon a judgment delivered by this Court reported in 1997(1) G.L.H. page 381 in the case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and Ors. more particularly at para 21 which reads as under:

> "There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth Vs. S.

Ramamurthy reported in 1993(2) Suppl. SCC 61."

4. It appears that the solitary offence registered against the petitioner was on 5-11-2001 and order of detention was passed on 5-1-2002 relying upon this offence and hence, there is a delay of three months in passing the order. No affidavit has been filed either by the detaining authority or the State explaining satisfactorily the delay caused in passing the order of detention. Therefore, in view of the above judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points. Learned advocate for the petitioner has stated at the bar that during the pendency of this petition, detenu was transferred from Jamnagar District Jail to Porbandar Special Jail and hence, yadi be sent to Porbandar Special Jail.

5. The petition is allowed. The impugned order of detention dated 5-1-2002 passed against the detenu is hereby quashed and set aside. The detenu Firozkhan Hajikhan Pathan is ordered to be set at liberty forthwith, if not required in any other case. Yadi be sent to Porbandar Special Jail. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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